



UNITED STATES CIVIL SERVICE COMMISSION
WASHINGTON, D. C. 20415

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File Personnel

Honorable Abraham Ribicoff
Chairman
Committee on Governmental Affairs
United States Senate
3308 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Ribicoff:

I am enclosing a copy of S. 2640 which has been revised to include changes which the Administration believes would improve the bill. We would be grateful if the committee would consider these changes during the course of marking up S. 2640.

A number of changes reflect a modification in the policy initially proposed by the Administration. These include:

1. Revised section 1104 adds a requirement that delegation of examining authority be subject to Office of Personnel Management standards and oversight.
2. Revised section 1206(c) (2) allows the Special Counsel to intervene in any appealable matter before the Merit Systems Protection Board for the purpose of presenting evidence of reprisals being taken against the appellant.
3. A new section 1206(m) requires the Special Counsel to report annually to the President and Congress concerning the investigation and disposition of all cases involving prohibited personnel practices, including those involving Presidential appointees.
4. Section 4303, relating to demotion or removal for unacceptable performance is revised to:
 - (a) require inclusion of charges of prior failures to perform if they are to be a part of the decision.

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- (b) require the agency to make a prima facie demonstration that the agency's determination was reasonable.
5. Section 7701 pertaining to the handling of personal cause appeals has been revised to:
- (a) permit any party to move for summary judgment and the adverse party to respond. Summary judgment; i.e., without a hearing, may be granted only if the appeals officer finds that there are no genuine or material issues of fact in dispute.
 - (b) place the initial burden on the agency to provide a prima facie demonstration that the disciplinary action promotes the efficiency of the service.
 - (c) require the employee to show that the agency's procedures substantially impaired the employee's rights, or that there was discrimination, or that the decision was arbitrary and capricious.
 - (d) limit OPM petitions for Board or Judicial review of a decision to those decisions which the Director feels are erroneous and will have a substantial impact on law, rule or regulation.

The new Title VII previously submitted to the committee provides for the establishment of arbitration procedures through bargaining. The arbitrator would be guided by the same standards described in paragraph 5(c) above.

6. Revised section 3132(a)(4) eliminates authority to fill career reserved positions through emergency or term appointments.
7. Section 3134, as revised, limits non-career appointees in each agency to 25% or the proportion in effect at the time of enactment, whichever is higher.

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8. Revised section 4311(b) requires the agency to consult with the Senior Executive in establishing performance requirements.
9. Revised section 5402(c)(2) provides that no employee will have pay reduced as a result of conversion to the merit pay system.
10. Revised section 5403 allows the merit pay system to be installed on a phased basis.

I want to particularly note that language has been changed at several points so as to be consistent with the provisions of Reorganization Plan I transferring Title VII of the Civil Rights Act and other responsibilities related to discrimination from the Civil Service Commission to the Equal Employment Opportunity Commission. The changes make clear that the meaning of discrimination shall be that developed under those Acts for which EEOC has responsibility. (Sections 2302(b)(1); 2302(d); 7701(g); 7701(h).

The bill is also amended at several points to exclude Government Corporations, the General Accounting Office and the intelligence agencies from coverage.

In addition to the major changes noted above, we have made many technical corrections.

We would be pleased to work with the committee to answer any questions on these matters.

Sincerely,

Alan K. Campbell

Enclosure

1 in controlled situations to achieve more efficient manage-
2 ment of the Government's human resources and greater
3 productivity in the delivery of service to the public;
4 and

5 (8) the training program of the Government should
6 include retraining of employees for positions in other
7 agencies to avoid separations during reductions in force
8 and the loss to the Government of the knowledge and
9 experience that these employees possess, and that this
10 policy will result in maintaining the morale and produc-
11 tivity of employees.

12 TITLE I--MERIT SYSTEM PRINCIPLES

13 MERIT SYSTEM PRINCIPLES; PROHIBITED PERSONNEL
14 PRACTICES

15 SEC. 101. (a) Title 5, United States Code, is amended
16 by inserting, after chapter 21, the following new chapter:

17 "Chapter 23.--MERIT SYSTEM PRINCIPLES

"Sec.

"2301. Merit system principles.

"2302. Prohibited personnel practices.

"2303. Responsibility of the General Accounting Office.

18 "§ 2301. Merit system principles

19 "(a) (1) Except as provided in paragraph (2) of this
20 subsection, this ^{chapter} ~~section~~ shall apply to--

21 "(A) an executive agency;

22 "(B) the Administrative Office of the United States

23 Courts; and

1 “(C) the Government Printing Office;

2 “(2) This ^{chapter}~~section~~ shall not apply to—

3 “(A) a Government corporation;

4 “(B) the Central Intelligence Agency, the De-
5 Intelligence Agency, and the National Security Agency
6 and, as determined by the President, an execu-
7 tive agency or unit thereof which conducts foreign in-
8 telligence or counterintelligence activities;

9 “(C) the General Accounting Office; and

10 “(D) any agency, or any unit, position or pos-
11 therein, excluded from the application of this sec-
12 tion by the President.

13 “(b) It is the policy of the Congress that in or-
14 der to provide the people of the United States with a
15 competent, honest, and productive Federal work force
16 reflective of the Nation's diversity, and to improve the
17 quality of public service, Federal personnel management
18 shall be implemented consistent with merit system pri-

19 “(c) The merit system principles are as follows:

20 “(1) Recruitment should be from qualified ca-
21 dets from appropriate sources in an endeavor to achieve
22 a force from all segments of society, and selection
23 advancement should be determined solely on the basis
24 of merit, ability, knowledge, and skills, after fair and o-

25 petition which assures that all receive equal oppo-
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General Accounting Office, but
(B), (1), (C), and (2) (2) of this title and does not
include any agency or unit thereof excluded from cov-
erage by the President under subsection (c) of this
section:

"(2) 'agency' does not include the Central

"(3) 'Senior Executive Service position' means a
position above the GS-15 or equivalent level in which
the incumbent—

"(A) directs the work of an organizational
unit;

"(B) is held accountable for the success of
specific line or staff programs or projects;

"(C) monitors the progress of the organization
toward goals and periodically evaluates and makes
appropriate adjustments to such goals; or

"(D) supervises the work of employees other
than personal assistants;

"(4) 'executive' means a member of the Senior
Executive Service;

"(5) 'career reserved position' means a position
which can only be filled by a career appointee, ~~or under~~
~~a limited emergency or term appointment~~ and to which
it is justifiable to restrict appointment to career employ-

Intelligence Agency, the Defense Intelligence Agency,
the National Security Agency, and, as determined
by the President, any executive agency or unit thereof
which conducts foreign intelligence or counter
activities.

1 "§ 5402. Merit pay system

2 " (a) In accordance with the purposes set forth in sec-
3 tion 5401 of this title, the Office of Personnel Management
4 shall establish a merit pay system which shall cover any
5 employee in a position which regularly requires the exercise
6 of managerial or supervisory responsibilities and which is
7 in GS-13 through GS-15 *as established under chapters*
8 *51 and 53 of this title.*

9 " (b) The merit pay system established under subsection
10 (a) of this section shall provide for a range of basic pay for
11 each grade to which it applies, which range shall be limited
12 by the minimum and maximum rate of basic pay of each
13 such grade.

14 " (c) (1) Concurrent with each adjustment under sec-
15 tion 5305 of this title, the Office of Personnel Management in
16 consultation with the Office of Management and Budget shall
17 determine the extent to which such adjustment shall be
18 made in rates of basic pay for all employees covered by the
19 merit pay system.

20 " (2) An increase in pay under this subsection is not
21 an equivalent increase in pay within the meaning of section
22 5335 of this title. ~~Any such increase shall not result in such~~
23 ~~pay being considered as fixed by administrative action.~~

24 " (3) No employee may be paid less than the minimum
25 rate of basic pay of the grade of such employee's position. [INSERT
#10]

" (d) (1) Under regulations prescribed by the Office of

1 tion 2301 (a) (without regard to paragraph (2) (D)
2 thereof) :

3 "~~(2)~~¹ 'agency' does not include the Central Intelligence
4 "~~(2)~~² 'employee' means an individual employed in
5 or under an agency;

6 "~~(3)~~⁴ 'eligible' means an individual who has quali-
7 fied for appointment in an agency and whose name has
8 been entered on the appropriate register or list of eli-
9 gibles;

10 "~~(4)~~⁵ 'demonstration project' means a project con-
11 ducted by the Office of Personnel Management, or un-
12 der its supervision, to determine whether a specified
13 change in personnel management policies or procedures
14 would result in improved Federal personnel manage-
15 ment; and

16 "~~(5)~~⁶ 'research program' means a planned study of
17 the manner in which public management policies and
18 systems are operating, the effects of those policies and
19 systems, the possibilities for change, and comparisons
20 among policies and systems.

21 "§ 4702. Research and development functions

22 "The Office of Personnel Management shall—

23 "(1) establish and maintain (and assist in the es-
24 tablishment and maintenance of) research and develop-
25 ment projects of improved methods and technologies in
Federal personnel management;

Agency: The Defense Intelligence Agency, and, as determined by the President, an executive agency or unit thereof which conducts foreign intelligence or counterintelligence activities.

Thanks to you
and Mr. Colucci,
we are EXEMPT
from the bill.

YR

23 MAY 1978